

## REMARKS

In the Office Action dated December 24, 2008, the Examiner has rejected Claims 45–49 and 51, 52, 54 and 55 under 35 U.S.C. § 103(a) as unpatentable over Gordon et al. in view of Petrus and Yoo. Claim 50 has been rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon et al./Petrus/Yoo and further in view of Blau et al. For a prima facie case of obviousness all of the limitations must be present in the cited prior art. The cited prior art fails to disclose all of the limitations found in the independent claims 45, 54 and 55. Namely comparing a physiological profile of a user to a physiological profile of the user or sports person's peers.

Petrus discloses in column 2, lines 23 that the disclosed health profile includes family history, personal health history, environmental history, diet and meal pattern, food supplements, and symptom history. The only disclosure of physiological information being used is blood pressure on line 55 of column 2, and physical activity on line 67 of column 2. However, it is noted that the blood pressure information is used to modify the dietary supplement profile. It does not use blood pressure in a comparison of profiles. The term physical activity is clearly distinct from physiological profile, since a physiological profile is indicative of a person's physiology whereas physical activity refers to the type and volume of activities that the person carries out.

The claims 45, 54 and 55 have now been amended to bring out this distinction, by particularizing the physiological profile as being representative of the user's physiological abilities. Clearly, Petrus fails to disclose such a profile.

The result of the comparison of profiles in Petrus is merely a list of dietary supplements that the user is advised to take to avoid deficiencies in their diet. Such an output is distinct from the output of the system of claim 45, which is a training regime setting out types of physical

activity, and when to carry out such activity. A training regime is a set of physical activities to undertake to provide a user's body with a particular growth stimulus.

Turning now to the Yoo document, the disclosure that a user should exercise within a target zone is not equivalent to a comparison of a user's physiological profile with the physiological profile of the user's nominal peers. Although the system dictates for a given level and a given age, what heart rate zone the user should work in, there is no disclosure that this heart rate zone is compared in any way to a physiological profile of the user's nominal peers. The heart rate zone is merely the region in which a person is advised to train in, irrespective of the person's physiology. Furthermore, there is no disclosure in Yoo, Petrus, Gordon or Blau of a comparison between physiological profiles.

For the reasons set out above, it is submitted that the skilled person could not combine the cited documents in such a way as to arrive at the invention as found in claims 45, 54 and 55. Claims 46 through 53 all depend directly or indirectly from claim 45. As such they contain all of the limitations found in claim 45 and are allowable for the forgoing reasons.

Moreover, the Examiner has failed to provide a motivation that would lead the skilled person to consider modifying the system disclosed in Gordon in this way. We respectfully submit that without knowledge of the invention, the skilled person would find no motivation to combine the cited references in this way.

Contrary to the Examiner's suggestion that the skilled person would find modify the system of Gordon to produce a training scheme based on a comparison of profiles disclosed in Petrus, it is submitted that there is no teaching to suggest that such a modification would produce a preferable result when devising a training scheme rather than a list of supplements. In Petrus, the profile includes information regarding health history, whereas in the present application, the

profile includes data representative of the physiological abilities of the sports person. Whereas it is clearly obvious that a comparison of illnesses suffered by individuals can lead to an indication of a nutritional deficiency (e.g. rickets is predominantly caused by a vitamin D deficiency) and thereby lead to a suggestion of a beneficial supplement, it is by no means obvious that a comparison of physiological profiles will lead to a successful suggestion of particular a training scheme.

Furthermore, it is by no means clear how the skilled person would find motivation from the disclosure of Yoo to modify a step of comparing a profile of a sports person with an idealized profile such that he arrives at to a step of comparing a profile of a sports person with a profile of the sports person's nominal peers. Yoo merely discloses that a person can train in a heart rate zone appropriate to the person's age group. The skilled person would not find any motivation from this disclosure that such information would be beneficially included in a profile to be compared.

Therefore, it would not be obvious to the skilled person to combine the disclosures of the cited prior art. Thus, claim 45 and its dependent claims 46 through 53 are allowable. For the same reasons, claims 54 and 55 are also allowable.

### **Conclusion**

It is the Applicant's belief the amendments herein place the application in condition for a Notice of Allowance, which is respectfully requested.

Applicant requests the Patent Office to charge Deposit Account No. 50-1971 the amount of \$52.00 to cover the additional claim fee under 37 CFR 1.16(i) for new Claim 56. Further, the Patent Office is authorized to charge any additional fees required by this paper or credit any overpayment to Deposit Account No. 50-1971.

Should any other amendments be necessary to place the application in condition for a Notice of Allowance, Examiner Frisby is invited to call the undersigned at the below noted telephone number.

Respectfully submitted,



---

Chad M. Hinrichs      Date: March 23, 2009  
Registration No. 45,836  
PTO Customer No. 28,827  
GABLE GOTWALS  
100 West 5th St., 10th Floor  
Tulsa, OK 74103  
Tel: (918) 595-4963  
Fax: (918) 595-4990  
E-mail: [iplaw@gablelaw.com](mailto:iplaw@gablelaw.com)